



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0337; FRL-9980-68-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; Interstate Transport Requirements for the 2012 Fine Particulate Matter
Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (the Commonwealth or Virginia). This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0337. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 9, 2018 (83 FR 21233), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of Virginia’s submittal to address the infrastructure requirements under section 110(a)(2)(D)(i) of the CAA for the 2012 PM_{2.5} NAAQS. The formal SIP revision was submitted by Virginia through the Department of Environmental Quality (VADEQ) on May 16, 2017.

II. Summary of SIP Revision and EPA Analysis

Virginia’s May 16, 2017 SIP submittal includes a summary of annual emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂), both of which are precursors of PM_{2.5}. The emissions summary shows that emissions from Virginia sources have been steadily decreasing for sources that could potentially contribute, with respect to the 2012 PM_{2.5} NAAQS, to nonattainment in, or interfere with maintenance of, any other state. The submittal also included currently available air quality monitoring data for PM_{2.5}, and its precursors SO₂ and NO₂, which Virginia alleged show that PM_{2.5} levels continue to be below the 2012 PM_{2.5} NAAQS in Virginia.

Additionally, Virginia described in its submittal several existing SIP-approved measures and other federally enforceable source-specific measures, pursuant to permitting requirements under

the CAA, that apply to sources of PM_{2.5} and its precursors within Virginia. Virginia concludes that the Commonwealth does not significantly contribute to, nor interfere with the maintenance of, another state for the 2012 PM_{2.5} NAAQS.

A detailed summary of Virginia's submittal and EPA's review and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} NAAQS may be found in the NPR and Technical Support Document (TSD) for this rulemaking action, which are available online at www.regulations.gov, Docket number EPA-R03-OAR-2017-0337.

EPA used the information in the 2016 PM_{2.5} Memorandum¹ and additional information for the evaluation and came to the same conclusion as Virginia. As discussed in greater detail in the TSD, EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM_{2.5} Memorandum, and then evaluated them to determine if Virginia's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM_{2.5} nonattainment areas. EPA concluded Virginia was not significantly contributing to nonattainment nor interfering with maintenance with 2012 PM_{2.5} NAAQS by any other state.

III. Public Comments

Two anonymous public comments were received on the NPR. The first comment generally discussed greenhouse gases and climate change and was determined to not be relevant nor specific to this rulemaking action. Thus, no response is provided for this comment. The second comment expressed that the commenter would not like to see particulate pollution from Virginia

¹ "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016). A copy is included in the docket for this rulemaking action.

or any state degrade Allegheny County, Pennsylvania's air. As explained in the proposed rulemaking in detail, EPA determined that Virginia's emission sources do not contribute significantly to nonattainment, nor interfere with maintenance, of the 2012 PM_{2.5} NAAQS in another state. EPA also concluded that Allegheny County, Pennsylvania was likely to attain the 2012 PM_{2.5} NAAQS without the need for further emission reductions. Thus, EPA does not expect emissions from Virginia to degrade Allegheny County, Pennsylvania's air quality.

IV. Final Action

EPA is approving the May 16, 2017 SIP revision addressing the interstate transport requirements for the 2012 PM_{2.5} NAAQS to the Virginia SIP because the submittal adequately addresses section 110(a)(2)(D)(i)(I) of the CAA.

V. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to

documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts....” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, addressing Virginia's interstate transport for the 2012 PM_{2.5} NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: July 2, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (e)(1) is amended by adding a second entry for Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS after the first entry to read as follows:

§ 52.2420 Identification of plan.

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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS	Statewide	05/16/17	<u>[Insert date of Federal Register publication]</u> <u>[Insert Federal Register citation]</u>	Docket 2017-0337. This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I).
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[FR Doc. 2018-15049 Filed: 7/13/2018 8:45 am; Publication Date: 7/16/2018]